

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIE E. COLEMAN,
Petitioner,
v.
KENNETH QUINN,
Responder

Case No. C06-5076RBL

**REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
*IN FORMA PAUPERIS***

Noted for June 9, 2006

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Twin Rivers Corrections Center, located at Monroe, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. Because petitioner appears to have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends the Court deny the application.

DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the district court has broad discretion in

1 denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963),
 2 *cert. denied*, 375 U.S. 845 (1963).

3 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a
 4 prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586
 5 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
 6 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
 7 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

8 By requesting the court to proceed *in forma pauperis*, petitioner is asking the government to incur
 9 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
 10 *habeas corpus*. In his amended application to proceed *in forma pauperis*, petitioner states he receives a
 11 gross salary of \$55.00 per month working for the Department of Corrections. (Dkt. #4). In documents he
 12 filed in response to the undersigned's order to show cause regarding deficiencies in his application (Dkt.
 13 #5), petitioner states he earns about \$23.00 to \$25.00 per month and he pays about 20% of that amount
 14 for child support. (Dkt. #6). The prison trust account statements petitioner submitted show he has an
 15 average spendable balance of between \$17.16 and \$20.49. (Dkt. #4 and #6).

16 While the undersigned recognizes that the wages petitioner earns and the funds to which he has
 17 access may not be great, given the fact that a prisoner's basic needs are provided for while incarcerated and
 18 the minimal filing fee required to proceed with this action (\$5.00), it is not unreasonable to expect
 19 petitioner to pay that fee from those funds.

20 CONCLUSION

21 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the
 22 undersigned recommends that the court deny his application to proceed *in forma pauperis*. Accordingly,
 23 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**
 24 **thirty (30) days** of the court's order.

25 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
 26 the parties shall have ten (10) days from service of this Report and Recommendation to file written
 27 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
 28 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit

1 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **June 9, 2006**, as
2 noted in the caption.

3 Dated this 18th day of May, 2006.

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Karen L. Strombom
United States Magistrate Judge